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Supreme Court of the United States

THE CROWN LIFE INSURANCE COMPANY,
A Canadian Corporation,
Petitioner

vs.

ALICIA VARAS, *Respondent*

Respondent's Brief in Opposition to Petition for Certiorari

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I. The only transaction involved in this case was the Insured's exercise in the United States of her unconditional, continuing right to receive the guaranteed cash values in United States Dollars, for which offer the Insured had paid consideration by way of premiums. Her acceptance of that offer and her demand for payment were made to the Insurer's Home Office and its office in Pennsylvania. The Pennsylvania Court correctly noted that the Policy specifically obligated the Insurer to pay the guaranteed cash values in United States Dollars; that the offer was continuing and irrevocable; that the Policy did not require that demand be made or payment accepted in Cuba or in Cuban Currency or under Cuban Law; and that requiring the Insurer to honor its obligation under its Policy raised no question of due process of law or International Law. The Solicitor General of the United States has already advised this Court in a similar case that such a holding does not present any substantial question of Federal Law or policy, and this Court, having requested those views, declined to review that decision. 9

II. The Insurer first erroneously complains that the Pennsylvania Court, acting on this Pennsylvania transaction, has given extra-territorial effect to Pennsylvania Law, and then makes the astounding argument that the Pennsylvania Court absolutely must give.

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Cuban laws extra-territorial effect in Pennsylvania in order to save the insurer from having to honor its unconditional promise to this Cuban refugee, who paid the premiums exacted for this promise to pay guaranteed cash values in United States Dollars. The Pennsylvania court correctly rejected this contention. Its judgment is consistent with other state court decisions which this Court has declined to review, and raises no question of federal or international law 16

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QUESTIONS PRESENTED

1. Whether any federal question is raised by the Pennsylvania court's decision that the terms of an insurance contract, and the relevant circumstances, permitted the inference that the United States was one of the places contemplated for performance of the insurer's unconditional promise to pay, at the option of the insured, specified guaranteed cash values in United States dollars, since (a) the policy did not require the insured to exercise the option in Cuba or in any other particular jurisdiction, and did not include any provision concerning payment other than the insurer's promise to pay, in United States dollars, all amounts due under the policy, after receipt of notice at the Home Office in Canada, and (b) the insurer had registered to do and was doing business in Pennsylvania?

2. Whether any federal question is raised by the Pennsylvania court's holding that the insured's exercise of her unrestricted option to receive, on demand, specified guaranteed cash values in United States dollars, could not be defeated in the United States, where the option was exercised, and where the insurer was doing business, on the ground that (a) international law required American courts to give extra-territorial effect to Cuban laws governing such transactions in Cuba, or (b) that "due process of law" is somehow violated by requiring the insurer doing business in Pennsylvania to fulfill its promise, which was accepted there, by paying the United States dollars it had agreed to pay, rather than the worthless pesos it could have paid if the insured had not become a refugee from Cuba?

COUNTER-STATEMENT OF THE CASE

Petitioner's incomplete statement and irrelevant arguments obscure the most significant facts in the case:

1. The only transaction involved in this case was the insured's exercise, by notice (R 164, 165, 212, 214) to the insurer's Home Office and its Pennsylvania office, of the policy's unconditional option giving her the right to receive, at that specific time, a specified guaranteed cash value ($3,985) in United States dollars, the currency deliberately selected by the insured and expressly stipulated in the application and in the policy (R 134-A, 134-C, being an agreed English translation of the policy; R 134-F, page 2 of the application attached to the policy; opinion of Pennsylvania Superior Court, R. 135, 139, 141, 145).

2. Neither the insured's exercise of the option, nor the resulting obligation on the part of the insurer, had anything to do with Cuba, or Cuban law, or Cuban courts, or Cuban currency, and vice-versa (R 144, 145).

3. This suit was started in Pennsylvania, in the county where the insurer's office was located, after the insurer declined (R. 213) to honor its obligation to make payment in United States dollars, relying solely on the Castro regime's laws, which do not purport to have, and are not entitled to have, any extra-territorial effect.

4. The insured's demand for payment in United States dollars was in pursuance of a right specifically reserved by her in the application and in the policy:

(a) The application contained, on page 2, an instruction to "State here any special provisions desired in the Policy," to which the insured responded:

"Currency of the United States of America." (R 134-F).

(b) The policy included the following:

"Currency — Dollars, Lawful Money of the United States of America. . . . . (dots in original) . . and every amount payable to or by the Company under this Policy shall be payable in such currency." (R 134-A).

"Premiums — TWO HUNDRED AND SEVENTEEN . . . (dots in original) . . . 00/100 DOLLARS, payable in advance every twelve months . . ." (R 134-A).

"Payment of Premiums — All premiums hereunder are payable to and not collectible by the Company. Payment of premiums must be made to the Home Office of the Company, or elsewhere in exchange for the Company's printed form of Official Receipt . . ." (R 134-B).

"Claims — If this policy becomes a claim by death, the Company will, subject to discharge and legal surrender of the Policy to the Company, pay the amount due within thirty days of the receipt at its Home Office of due Proof of Claim . . ." (R 134-B).

"Guaranteed Values — At the end of the third or any subsequent Policy Year, or within thirty-one days thereafter, provided all premiums to date have been paid in full, and in the absence of any legal restrictions, and upon legal surrender of this Policy to the Company for cancellation, the Company will grant, subject to adjustment in case of indebtedness to the Company, one of the following options:

"(a) A Cash Value of the amount stated in the following schedule
Guaranteed Value for Each 1,000 of sum insured

End of Policy Year	Cash Value
17	789

* * *

The currency unit of the above guaranteed values is that stipulated on the first page hereof." (R 134-C).

"War Aviation and Travel." (The relevant parts of this provision may be paraphrased by saying that the benefits payable were limited to return of premiums, adjusted for certain factors, *only* if death occurred outside the "Home Areas," which term was defined as including "the Islands of the West Indies, the Bermudas, and the Continents of North and South America . . ." (R 134-C).

5. The insured's exercise of her option to receive the guaranteed cash value had to be made outside Cuba, to the Home Office of the Company, in Canada, in accordance with paragraph 5 of the "General Conditions" appearing on page 2 of the policy (R 134-B) which includes the following:

"(b) No notice of any kind shall be deemed to have been made to the Company unless made in writing to the Home Office and acknowledged in writing by the Actuary or Secretary of the Company."

6. The insurer's implied attack on the insured's standing to sue in Pennsylvania (see pages 6, 10, 11 of Petition) is completely lacking in candor. At trial, when the insured's counsel undertook to establish the facts concerning the insured's departure from Cuba, her actions looking toward United States citizenship, her intention to reside with relatives in Pennsylvania, and her reasons for suing in that state (R 217-224), the trial judge asked, "Is the Defense going to take any position that she is here as a result of

manoeuvering rather than—" (R 222, 223), the insurer's counsel replied, "No, your Honor" (R 223). The trial judge then sustained the insurer's objections (R 223), thereby excluding this evidence, the absence of which the insurer now emphasizes. As the Superior Court of Pennsylvania stated (R 136), the insured is a lawful, permanent resident of the United States. Indeed, the insurer admitted this at trial and did not challenge the insured's right to protection of her legal rights by American courts (R 219, 220, 223, 224).

7. There is no finding in this record, nor any basis for any finding, that the insured ever treated this policy as transformed into a peso policy.[1] The Superior Court of Pennsylvania decided otherwise (R 145). Moreover, the insurer's obligation to make all payments in dollars could be modified only pursuant to paragraph 5, on page 2 (R 134-B), entitled "General Conditions," subparagraph (a), which states:

> "This policy can not be varied except in writing over the seal of the Company and the signatures of the President or one of the Vice Presidents and the General Administrator or Secretary of the Company, and no previous course of dealing on the part of the Company or anyone on its behalf with the Insured or anyone, whether acting in his behalf or otherwise, shall be deemed to constitute a waiver by the Company of any condition of this policy."

8. Even if, contrary to respondent's opinion, all the insurer's assets in Cuba were to be confiscated as a penalty

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[1] The Superior Court of Pennsylvania noted that some premium notices contained the legend "$217 M.N.", and erroneously stated, in its slip opinion (R 145) that the *plaintiff* contended this was a modification of the policy. This contention had of course been made by the *defendant* (insurer); it was rejected by the Pennsylvania Superior Court (R 145), which noted that, by its terms, the policy could not be modified in such a manner. (See R 134-B, and the specific provision quoted at page 5 of this brief.)

for paying respondent her guaranteed cash value in the United States, this could not possibly affect the insurer's obligations to third parties outside of Cuba, as is pointed out in the Memorandum of the Solicitor General of the United States (Appendix "A" to this brief), filed at the request of this Court in a case where such confiscation of an American insurer's assets had already taken place. The insurer admitted that any assets of the insurer held in Cuba, other than the minimum deposit of $25,000 required by statute, were maintained there as a matter of business judgment (R 323, 324) and that, prior to Castro, premiums collected in Cuba were sent to New York and elsewhere for investment (R 282).

9. The policy was prepared by the insurer and could have contained — but did not contain — a provision that all payments were to be made in Cuba, as was stated in the policies involved in *Confederation Life Ass'n v. Ugalde*, 164 So. 2d 1, 3 (Fla., 1964), cert. denied 379 U. S. 915, and related cases, relied upon by the insurer. Those cases were distinguished by the same state's courts, in holding the insurer liable under other policies not requiring payment in Cuba, and this Court also declined to review those decisions (see pages 15 and 18 of this brief).

10. The decision below makes it clear that all that is involved here is the refusal of an insurer to fulfill its agreement to pay guaranteed cash value in United States dollars, an obligation which it assumed in return for premiums, fixed by it, and which it received. The insurer's refusal is not based on any claimed defense on the merits, or indeed on any technical legal defense under the law of the place where the option was exercised and where the insurer was doing business. It is based solely on the fact that this refugee's former homeland is now in the hands of a dictator whose laws allegedly would not permit her to receive United States dollars if she had not escaped and were still in Cuba (R 168).

11. As was pointed out by the Superior Court of Pennsylvania, the insured's easily understandable choice (R 139) of United States dollars is by specific terms of the policy made applicable to all payments of guaranteed cash values and her option to receive such payments is not limited in any way (R 145). Similarly, the policy specifically permitted the insured to travel all over North and South America (except Alaska) without limitation of benefits except with respect to travel on other than regularly scheduled commercial flights (R 134-C).

12. There is not a single fact in this record which justifies the insurer's demand that this Court order the insured to abandon her right to receive payment in United States dollars and accept payment in worthless pesos, in the only jurisdiction where the insurer can avoid its liability to her under its own policy, and there is no principle of federal law which would either require or justify such a result. Indeed, the judgment of the Pennsylvania Superior Court, interpreting the policy as not requiring such a result, raises no federal question.

13. That court simply held that the terms of the policy, and the relevant circumstances, permitted the inference that the United States was one of the places contemplated for performance of the insurer's obligations under the "guaranteed cash value" option granted to the insured; that that option, giving the insured the right to receive specified guaranteed cash values in United States dollars, was a continuing irrevocable offer; that such an offer, being executory, the law governing performance was the place of the insured's exercise of the option; that, since the insurer was doing business in Pennsylvania, the policy permitted exercise of the option in that state; and that, by the insured's acceptance of the offer and her demand for payment at the insurer's office in Pennsylvania, the obligation was created there and was enforceable there, under the law of that state.

Obviously, there is nothing for this Court in such a case, and this insurer has so admitted in its Brief in Opposition in No. 452, October Term, 1964, the *Ugalde* and *Calvo* cases, cert. denied 379 U.S. 915 (p. 7 of insurer's Brief in Opposition, quoted and discussed at page 9 of this brief).

Moreover, neither the insurer's extravagant arguments nor the Canadian Government's statement echoing them, can make it a violation of either "due process" or "international law" for an American court having jurisdiction to rule that such an insurer must pay its debts in the currency it agreed to pay them in. The fact that it may be a very substantial windfall for which this and other insurers are grasping, thanks to Fidel Castro, to avoid dollar obligations which the insurers gladly undertook in return for premiums paid either in dollars or in good pesos, scarcely justifies the insurer's request that this Court exercise its discretionary jurisdiction to the detriment of this unfortunate refugee, in a case not otherwise meriting a second thought.

ARGUMENT

I. THE ONLY TRANSACTION INVOLVED IN THIS CASE WAS THE INSURED'S EXERCISE IN THE UNITED STATES OF HER UNCONDITIONAL, CONTINUING RIGHT TO RECEIVE THE GUARANTEED CASH VALUES IN UNITED STATES DOLLARS, FOR WHICH OFFER THE INSURED HAD PAID CONSIDERATION BY WAY OF PREMIUMS. HER ACCEPTANCE OF THAT OFFER AND HER DEMAND FOR PAYMENT WERE MADE TO THE INSURER'S HOME OFFICE AND ITS OFFICE IN PENNSYLVANIA. THE PENNSYLVANIA COURT CORRECTLY NOTED THAT THE POLICY SPECIFICALLY OBLIGATED THE INSURER TO PAY THE GUARANTEED CASH VALUES IN UNITED STATES DOLLARS; THAT THE OFFER WAS CONTINUING AND IRREVOCABLE; THAT THE POLICY DID NOT REQUIRE THAT DEMAND BE MADE OR PAYMENT ACCEPTED IN CUBA OR IN CUBAN CURRENCY OR UNDER CUBAN LAW; AND THAT REQUIRING THE INSURER TO HONOR ITS OBLIGATION UNDER ITS POLICY RAISED NO QUESTION OF DUE PROCESS OF LAW OR INTERNATIONAL LAW. THE SOLICITOR GENERAL OF THE UNITED STATES HAS ALREADY ADVISED THIS COURT IN A SIMILAR CASE THAT SUCH A HOLDING DOES NOT PRESENT ANY SUBSTANTIAL QUESTION OF FEDERAL LAW OR POLICY, AND THIS COURT, HAVING REQUESTED THOSE VIEWS, DECLINED TO REVIEW THAT DECISION.

It is patently clear, not only from Respondent's Counter-Statement of the Case but also from the Opinion of the Superior Court of Pennsylvania, that the only transaction involved in this case was the insured's exercise in the United States of her option to receive the guaranteed cash value in United States dollars, and that option was part of the consideration which the insured received in return for her premium.

First of all, in its Brief in Opposition filed in this Court in No. 452, October Term, 1964, the *Ugalde* and

Calvo cases, cert. denied 379 U.S. 915, this insurer pointed out that those insureds "do not and could not claim" that a state court's "altogether conventional holding" that under its conflict rules the insurer's obligations were governed by Cuban law "presents a federal question" (p. 7, Brief in Opposition). The insurer's contention that a contrary holding would have there raised a federal constitutional issue, "see, e.g., Home Ins. Co. v. Dick, 281 U.S. 397.", could not be made here, where there is no policy provision requiring payment in Cuba, demand for payment had to be made outside Cuba, and payment in United States dollars is specifically required, and no attempt is being made to enlarge the insurer's obligation.

Secondly, it is familiar law that a policy provision giving the insured the option to elect to receive cash surrender values is a continuing, irrevocable offer by the insurer to pay such amounts on demand, and that a contract requiring the insurer to make the payment comes into existence only when the offer is accepted by the insured.

The rule established by the overwhelming weight of the decisions[2] is summarized in 45 *C.J.S.*, Insurance, §460 (b), pp. 123, 124, as follows:

> "Insured's contractual privilege to exercise an option to take the cash surrender value of his insurance policy is one which he has bought and paid for and is irrevocable as long as the policy remains in force. The

[2] The case of *Aetna Life Insurance Co. v. Dunken*, 266 U.S. 389, has no present relevance. That 1924 decision did *not* permit the insurer to avoid its liability under the policy; it simply denied the forum state the right to *add* to the recovery an attorney's fee and a penalty as well. Secondly, the decision has been limited to its own facts by this Court, *Griffin v. McCoach*, 313 U.S. 498, 504-507. One federal trial court has said that "subsequent decisions have eroded the effect of *Aetna* to the extent that it is of little, if any, help to me on the present problem." *Tierney v. Safeco Ins. Co. of America*, 216 F. Supp. 590, 596. And see discussion by L. Hand, J., in *Tatum v. Guardian Life Ins. Co.*, 75 F. 2d 476, 477 (CCA 2).

The correct rule is of course the one set forth by the late Judge Parker in *Lipman v. Equitable Life Assur. Soc. of the United States*,

rights of the parties become fixed immediately on insured's exercise of said option, and, when insured demands a cash surrender value of his policy and at the same time surrenders it to the insurance company, he is then deemed to complete the execise of his option by accepting the open offer of the insurer, as contained in the policy, to pay the cash surrender value on demand; at that point the obligation of insurer to pay the cash surrender value becomes a fixed and perfected obligation or matured debt with all other obligations merged into it . . ."

This rule is also set out in 29 Am. Jur. (1960) Insurance §628, p. 913, and in:

Lipman v. Equitable Life Assur. Soc. of the United States, 58 F. 2d 15, 18 (CCA 4);
United States v. Garland, 122 F. 2d 118 (CCA 4), cert. denied 314 U. S. 685;
Pacific States Life Ins. Co. v. Bryce, 67 F. 2d 710, 712 (CCA 10);
United States v. Penn Mut. Life Ins. Co., 130 F. 2d 495, 497, 498 (CCA 3);
Equitable Life Assurance Society of U. S. v. United States, 331 F. 2d 29, 35 (CCA 1).

It is also familiar law that the place of performance of such a contract is the place where the option is exercised. *Restatement of The Law, Conflict of Laws*, §§355, 356, 358, 359, set out in the footnote.[3]

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58 F. 2d 15, 18 (CCA 4), that "the rights of the parties became fixed and insured became entitled to the cash surrender value, and nothing more, when she exercised the option. It was not necessary that defendant do anything. There was a meeting of the minds of the parties when insured accepted the continuing offer of the company evidenced by the option."

[3] The *Restatement of the Law, Conflict of Laws* (1934), provides as follows:

"§355. PLACE OF PERFORMANCE.

Consequently, the Superior Court of Pennsylvania was quite correct in holding that the exercise of the option in Pennsylvania, where the insurer had qualified to and was doing business, made that state the place of performance and permitted application of its laws to the transaction. This decision was clearly consistent with the policy which

(1) specified that all payments had to be made in United States currency (R 134-A);

"The place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed."

"§356. ALTERNATIVE CONTRACT.

"(1) When a contract involves a promise to do one thing or another at the option of either party the place of performance is undetermined until the option is exercised, and it then becomes the place of performing the promise which is chosen by the party having the option.

"(2) If an option to do one thing or another is to be exercised by the promisor and he does not exercise his privilege of choice, the place of performance is the place where the less onerous promise was to be performed."

"§358. LAW GOVERNING PERFORMANCE.

"The duty for the performance of which a party to a contract is bound will be discharged by compliance with the law of the place of performance of the promise with respect to:

"(a) the manner of performance;

"(b) the time and locality of performance;

"(c) the person or persons by whom or to whom performance shall be made or rendered;

"(d) the sufficiency of performance;

"(e) excuse for non-performance."

"§359. PERFORMANCE OF CONDITION OR EXERCISE OF OPTION

"The law of the place of performance or happening of a condition or of the exercise of an option in a contract governs the performance of the condition or exercise of the option."

See also §361 through §372.

(2) required that notice be given to the insurer's Home Office in Canada (R 134-B);

(3) permitted the insured to travel throughout North and South America (R 134-C);

(4) did not contain any provision requiring that the option had to be exercised or payment accepted in (or in the currency of) Cuba or indeed any particular jurisdiction (R 145) in those areas in which the insured was specifically permitted to travel.

Such a factual situation fully justified the Pennsylvania Superior Court's conclusion that United States law, and not Cuban law, applied to this transaction. Other states and federal courts have consistently reached the same conclusion in such situations:

Scudder v. Union National Bank of Chicago, 91 U.S. 406;

Liebeskind v. Mexican Light and Power Co., 116 F. 2d 971 (CCA 2);

Repsold v. New York Life Insurance Company, 216 F. 2d 479, 485 (CCA 7);

Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70, 74 (La. 1964), cert. denied 377 U.S. 997;

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197, 198 (Fla. 1963), cert. denied 377 U.S. 990;

And see *Restatement of the Law, Conflict of Laws*, §355, providing that "[t]he place of performance is the state where, either by specific provision or by interpretation of the language of the promise, the promise is to be performed."

In this case, the policy does not require that the option be exercised or payment accepted in Cuba, but it does specifically permit travel outside Cuba and requires notice to be given outside Cuba. Moreover, payment in United States

dollars was deliberately specified in the application (R 134-F) and written into the policy (R 134-A, 134-C). The state court was therefore quite within its power and quite correct in holding that Cuban law had nothing to do with the transaction. As the Superior Court of Pennsylvania noted, "it doesn't make common sense," in view of these provisions, to say that a policy "that provides that all payments under the contract shall be in the currency of another country, also a corporate residence of the Company, includes the intention that the only place of performance is in Cuba and the Company is not obligated to perform in any other place." (R 145).

What the insurer is asking this Court to do is to *insert* in the policy a provision that is not there — that the option must be exercised and payment must be accepted in Cuba or in Cuban currency. This is the only way in which this case could be brought within the rule of those few cases in which the insurers have (on significantly different facts) been successful:

Confederation Life Ass'n v. Ugalde, 164 So 2d 1 (Fla. 1964), cert. denied 379 U.S. 915;
Crown Life Insurance Company v. Calvo, 164 So. 2d 813 (Fla. 1964), cert. denied, 379 U.S. 915; and
Sun Life Assur. Co. v. Klawans, 165 So. 2d 167 (Fla. 1964).

Reference to the *Ugalde* decision, upon which the other two decisions were based, discloses, as stated by the Supreme Court of Florida, that "*the policy required that all sums payable thereunder be paid in Havana, Republic of Cuba*, in legal currency of the United States." 164 So. 2d 1, 2; 151 So. 2d 315, 316 (emphasis added).

By contrast, the cases where (as in this case) payment in Cuba was *not* specified, have resulted in the enforcement in the United States of the insurer's promise to pay guaranteed cash values, and this Court has consistently denied certiorari:

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197 (Fla. 1963), cert. denied 377 U.S. 990;
Pan American Life Insurance Co. v. Raij, 156 So. 2d 785 (Fla. 1963), cert. denied 379 U.S. 920;
Pan American Life Insurance Co. v. Botana, 163 So. 2d 767 (Fla. 1964), cert. denied 380 U.S. 943;
Pan American Life Insurance Co. v. Lorido, 154 So. 2d 200 (Fla. 1963), cert. denied 377 U.S. 990;
Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70 (La. 1964), cert. denied 377 U.S. 997.

In the *Lorido* case, upon request of this Court, the Solicitor General of the United States filed a "Memorandum For The United States" in which he stated flatly that "this case does not present any substantial question of federal law or policy" (See Appendix "A" to this Brief). That conclusion was based on a state court decision, similar to the decision here under review, that the place of performance governed the rights of the parties in connection with the insured's demand for payment of the cash surrender value. The Solicitor General took pains to point out that the "act-of-state" doctrine had no application to cases of this kind and that to give effect to Cuban laws allegedly prohibiting the requested payment "would be to accord them an extra-territorial application which has never been required under the act-of-state doctrine."

Of similar significance is the fact that the Solicitor General also pointed out that the admitted expropriation of the property of the American insurer involved in the *Lorido* case "could not determine petitioner's [insurer's] obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba."

The fact that the policy in *Lorido* called for payments in New Orleans, as well as in dollars, does not make that decision inapplicable here. The point is that, unless the insurer specifies a particular place at which the cash sur-

render values must be accepted, those values are due at the place where the option is exercised and the insurer's obligation created. See *Restatement of the Law, Conflict of Laws* §§355, 356, 358, 359, and the authorities cited on pages 15 and 18 of this brief.

In this case, the option was exercised and performance required in Pennsylvania. Obviously, a decision by the courts of that state that, under the facts of this case, the insurer's obligation was enforceable there, where it was created, does not involve any question of either federal law or policy.[4]

II. THE INSURER FIRST ERRONEOUSLY COMPLAINS THAT THE PENNSYLVANIA COURT, ACTING ON THIS PENNSYLVANIA TRANSACTION, HAS GIVEN EXTRA-TERRITORIAL EFFECT TO PENNSYLVANIA LAW, AND THEN MAKES THE ASTOUNDING ARGUMENT THAT THE PENNSYLVANIA COURT ABSOLUTELY MUST GIVE CUBAN LAWS EXTRA-TERRITORIAL EFFECT IN PENNSYLVANIA IN ORDER TO SAVE THE INSURER FROM HAVING TO HONOR ITS UNCONDITIONAL PROMISE TO THIS CUBAN REFUGEE, WHO PAID THE PREMIUMS EXACTED FOR THIS PROMISE TO PAY GUARANTEED CASH VALUES IN UNITED STATES DOLLARS. THE PENNSYLVANIA COURT CORRECTLY REJECTED THIS CONTENTION. ITS JUDGMENT IS CONSISTENT WITH OTHER STATE COURT DECISIONS WHICH THIS COURT HAS DECLINED TO REVIEW, AND RAISES NO QUESTION OF FEDERAL OR INTERNATIONAL LAW.

The insurer's argument that the Superior Court of Pennsylvania has granted extra-territorial effect to Pennsylvania law is transparently false. As has already been

[4] *Home Ins. Co. v. Dick*, 281 U.S. 397, does not help this insurer. There, in a garnishment action in Texas, this Court forbade application of a Texas statute outlawing any contract limiting the time for suit to less than two years, disapproving an attempt to invoke this

demonstrated, the only transaction involved in this case occurred in Pennsylvania where the insurer was doing business and where its obligation arose in accordance with the terms of the policy.

Curiously enough, and in almost the same breath, the insurer insists that the state courts were obliged to apply Cuban law to this Pennsylvania transaction. As pointed out in the "Memorandum For The United States" in *Lorido*, this is the only possible action which would involve the forbidden extra-territorial application of any law.

Finally, as was pointed out in *Blanco v. Pan American Life Insurance Co.*, 221 F. Supp. 219, 227, 229 (DC SD, Fla.), the Cuban laws on which the insurer relies do not even purport to have extra-territorial effect; and, if there were grounds for such an interpretation of those laws, American courts would not enforce them, as was also pointed out in the Solicitor General's Memorandum in *Lorido*, citing the classic case of *Underhill v. Hernandez*, 168 U.S. 250, 252. The Pennsylvania court in this case correctly held that these Cuban laws did not relieve the insurer of its obligation to pay the guaranteed cash value in a proper jurisdiction outside Cuba, as other American courts have held when the policy did not require payment in Cuba:

Pan American Life Insurance Co. v. Recio, 154 So. 2d 197 (Fla. 1963), cert. denied 377 U.S. 990;
Pan American Life Insurance Co. v. Raij, 156 So. 2d 785 (Fla. 1963), cert. denied 379 U.S. 920;
Pan American Life Insurance Co. v. Botana, 163 So. 2d 767 (Fla. 1964), cert denied 380 U.S. 943;
Pan American Life Insurance Co. v. Lorido, 154 So. 2d 200 (Fla. 1963), cert. denied 377 U.S. 990;
Ajuria v. Pan American Life Insurance Co., 161 So. 2d 70 (La. 1964), cert. denied 377 U.S. 997.

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statute in litigation involving a claim under a policy issued by a Mexican insurer covering a vessel while in certain Mexcan waters, and specfically providing that the policy was subject to Mexican law and that any loss was payable in Mexico, in Mexican funds. A situation more dissimilar to the instant case cannot be imagined.

The insurer has indeed gone far afield in seeking to conjure up some basis for its assertion that the decision below is one which "involves the United States in a violation of international law" (Petition, p. 14).

On this record, such a suggestion verges on the ridiculous. None of the decisions of this Court cited by the insurer involved an analogous factual or legal situation.[5]

The various quotations from other authorities, each of

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[5] *Lauritzen v. Larsen*, 345 U.S. 571, and *Romero v. International Terminal Operating Co.*, 358 U.S. 354, are of no relevance here. They involved foreign seamen, employed on foreign ships, temporarily in New York, attempting to invoke American statutory remedies for injuries incurred on the foreign ship. This Court's inability to find any basis for applying a long-standing American statutory remedy to disputes involving foreign parties does not provide any parallel between those cases and the instant case.

The insurer's own treatment of *Societe Internationale v. Rogers*, 357 U.S. 197 (page 12, petition), demonstrates that the insurer finds no help therein.

In *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398, 428, this Court said: ". . . we decide only that the Judicial Branch will not examine the validity of a *taking of property within its own territory* by a foreign sovereign government, extant and recognized by this country at the time of suit, in the absence of a treaty or other unambiguous agreement regarding controlling legal principles, even if the complaint alleges that the taking violates customary international law" (emphasis added). The Court's agreement with Professor Jessup that "rules of international [and act-of-state matters] law should not be left to divergent and perhaps parochial state interpretations" has no application in this case. Indeed the Solicitor General's Memorandum for the United States filed with this Court in the *Lorido* case, 377 U.S. 990, was submitted to this Court in May of 1964, after its decision in the *Sabbatino* case, and specifically pointed out that the act-of-state doctrine is not involved in these cases.

Dougherty v. Equitable Life Assur. Soc'y and 25 Other Cases, 261 N.Y. 71, 193 N.E. 897, involved Russian contracts payable in Russia in Russian funds from Russian assets, and the policy provided that all disputes were to be settled in Russian courts according to Russian law.

which has been wrenched out of context, are meaningless. A reading of some of the material referred to discloses how inapposite it is.

For example, the insurer refers to ". . . *The Alsop Claim (United States v. Chile)*, submitted under Protocol of 1909, 5 Am. J. Int'l L. 1079 (1911)". As indicated at page 1081 of that report, that claim arose out of an *agreement with the government of Bolivia* so long ago as the year 1876, and the matter had been in litigation between the governments of the United States and Chile for more than twenty-five years before the decision then being reported. The claim was one asserted by a liquidator of a firm composed of American citizens which was registered in Chile, with its seat of business in Valparaiso. Among other things, it involved a dispute between the governments of Chile and Bolivia as to the effect of a treaty between them and the extent to which Chile had assumed Bolivia's obligations. The case obviously has no relevance here.

The insurer also cites "*Illinois Central R. Co. (United States v. Mexico)*, United States and Mexico General Claims Comm'n under Convention of 1923 (March 31, 1926, [1926-1927] Opinions of Comm'rs 15, 20 Am. J. Int'l L. 794 (1926), 4 U.N. Rep. Int'l Arb. Awards 21 (1951)." That case involved a claim being prosecuted by the United States government on behalf of an American railroad *against the United Mexican States* for $1,807,531.26, representing the price of ninety-one locomotives sold to the government Railway Administration of the National Railways of Mexico. The matter was handled pursuant to a Convention between the United States and Mexico which provided that (with certain exceptions not here relevant) the Commission would process all claims by nationals of one government against nationals of the other for losses or damages to such nationals or their property. This case is also without relevance here.

The insurer also refers to "*Case of the S.S. 'Lotus' (France v. Turkey)*, P.C.I.J., Ser. A., No. 10 (1927), 2

Hudson, World Court Reports 20 (1935)". That case involved Turkey's *prosecution of the officer of the watch on a French vessel* which collided with a Turkish vessel on the high seas, resulting in the death of eight Turkish crew members. The case involved the issue as to whether or not Turkey had acted in conflict with principles of international law, "contrary to Article 15 of the Convention of Lausanne of July 24, 1923, respecting conditions of residence and business and jurisdiction." This case is also lacking in relevance here.

The insurer also refers to "*Cases of Serbian and Brazilian Loans*, P.C.I.J., Ser. A., Nos. 20/21 (1929), 2 Hudson, World Court Reports 340, 402 (1935)". These cases also involved claims asserted *against foreign governments* by nationals of various other countries and have no present relevance.

Finally, the argument that if the insurer pays this claim in dollars its assets in Cuba may be expropriated, even if true (which the insured denies), is irrelevant. As the Solicitor General noted in his Memorandum in the *Lorido* case, where expropriation had *already* taken place, "that expropriation could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba." See Appendix to this brief, page 22.

It may be that both this insurer and the Canadian government are now regretting the insurer's failure to specify in the policy that cash surrender values would be paid in Cuba, or in Cuban currency, or out of reserves in Cuba, or only under Cuban law, or by order of the Cuban courts. However, it is scarcely the function of this Court to rewrite this policy, especially when the effect would be to permit the insurer to avoid making the payment it agreed to make to this refugee, in the only currency which is of any use to her, and relegate her to the only forum where she cannot collect what the insurer owes to her.

It would be an incredibly curious and sardonic application of "due process of law" that would require the courts of this country to bring about the confiscation of this Cuban refugee's property out of respect for the decrees of a dictator, especially when those decrees themselves do not purport to apply except "in the national territory."

CONCLUSION

For all the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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Appendix A

In The

Supreme Court of the United States

October Term, 1963

Nos. 379, 380

PAN-AMERICAN LIFE INSURANCE COMPANY,
Petitioner

v.

MARIE LORIDO

On Petitions for Writs of Certiorari to the Supreme Court of Florida and to the District Court of Appeal of Florida, Third District

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MEMORANDUM FOR THE UNITED STATES

By order of the Court, dated April 6, 1964, the Solicitor General was invited to express the views of the United States with respect to this case. For the reasons outlined below, we believe that this case does not present any important question of federal law.

Respondent, the beneficiary under an insurance policy issued by petitioner upon the life of her late husband, brought this action in Florida (where she presently resides) for the payment of benefits claimed to be due under the policy (Pet. App. 16). The policy had been issued by petitioner, a Louisiana corporation, in 1943, in New Orleans, Louisiana, and was delivered to the insured, a Cuban national, in Havana, Cuba (Pet. App. 16). It provided that

payments by both parties of all obligations would be made in United States currency in New Orleans (Pet. App. 16). The insured duly paid the premiums until his death in Cuba in 1960 (Pet. App. 16).

In contesting the widow's right to the proceeds of the policy, petitioner's chief argument has been that certain decrees of the Cuban Government extinguished its liability under the policy and that, under the act-of-state doctrine, which precludes courts of this country from inquiring into the validity of foreign governmental acts committed in the foreign sovereign's territory, the Florida courts were required to give effect to the Cuban Acts. Specifically, petitioner relies upon a 1959 law allegedly making it unlawful for any Cuban national to receive payment of a debt anywhere except in Cuba (Petition 5; Pet. App. 3-4) and a 1960 law expropriating petitioner's assets in Cuba and purportedly substituting the Cuban Government as obligor with respect to petitioner's liabilities (Pet. App. 5-8). In addition to the argument that these Cuban laws and the act-of-state doctrine require an American court to recognize the petitioner's exoneration from liability under the policy, the petitioner also relies upon Article VIII (2) (b) of the Articles of Agreement of the International Monetary Fund (the Bretton Woods Agreement), 60 Stat. 1401, 1411 (Pet. App. 27).

The Circuit Court of Dade County, Florida, rejecting the petitioner's basic contentions, held that, since the place of performance under the insurance policy was the United States and not Cuba, the Cuban decrees relied upon could not relieve the petitioner from its duty to perform in accordance with the terms of the policy (Pet. App. 17-23).[1] The District Court of Appeal of Florida affirmed without

[1] Because the insured had made and received payments in pesos instead of dollars as a result of a 1951 Cuban monetary decree, the court held that the parties had, by their conduct, agreed to payment in pesos instead of dollars (Pet. App. 16, 17). The court did *not* find that a similar novation occurred with respect to the place of payment. This remained New Orleans, pursuant to the written contract,

opinion (Pet. App. 25), and the Supreme Court of Florida denied certiorari.

1. The Florida courts have held that the law of Louisiana (the place of performance and the place of petitioner's incorporation and principal office), and not the law of Cuba (the place of the insured's residence), determines the rights of the parties under the insurance policy which is the subject of this case. This holding presents no substantial question of federal law. In particular, the act-of-state doctrine has no application to the facts of this case.

The principle precluding inquiry by our courts into the validity of foreign acts of state, and requiring the recognition of rights derived from such governmental acts, applies only to acts affecting property or rights within the acting sovereign's territorial jurisdiction.[2] Thus, Chief Justice Fuller's classic statement of the act-of-state doctrine is that "the courts of one country will not sit in judgment on the acts of the government of another *done within its own territory*." (Emphasis supplied.) *Underhill v. Hernandez*, 168 U.S. 250, 252. See, also, *Banco Nacional de Cuba v. Sabbatino*, decided March 23, 1964, slip op., pp. 1, 13, 21, 28. The Cuban acts relied upon by petitioner allegedly purported to extinguish petitioner's liability to make payment in the United States and to prohibit the insured from receiving payment in the United States. To give effect to these laws would be to accord them an extra-territorial application which has never been required under the act-of-state doctrine.

The only act of the Government of Cuba which dealt with property or rights located in Cuba was the expropriation of petitioner's Cuban property. This expropriation

[2] The only possible exception to this limitation is where there is a significant policy of our national government requiring that extra-territorial effect be accorded a foreign governmental act in a particular case. See *United States v. Belmont*, 301 U.S. 324; *United States v. Pink*, 315 U.S. 203. No similar federal policy exists in the present case.

could not determine petitioner's obligation to perform its contracts with third parties outside Cuba in circumstances where the contracts provided for performance in places other than Cuba.

2. Further review is not warranted with respect to petitioner's other contention—that granting recovery to the respondent is contrary to Article VIII(2) (b) of the International Monetary Fund Articles of Agreement. In April of this year, Cuba withdrew from the International Monetary Fund. The provisions of Article VIII(2) (b) are for the benefit of member states and not for the benefit of private parties. Since Cuba is no longer a member of the Fund and since the date of proposed relief determines the applicability of Article VIII(2) (b), a decree granting recovery to the petitioner will not violate the provisions of the Agreement. See *Stephen v. Zivnostenska Banka, National Corporation*, 140 N.Y.S. 2d 323, 326.

In view of the United States, therefore, this case does not present any substantial question of federal law or policy.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

May 1964.